

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

RAFAEL GONZALEZ

Plaintiff,

-against-

THE CITY OF NEW YORK, POLICE OFFICER
JOSEPH COUGHLIN AND POLICE OFFICER
ROBERT DREISS,

Defendants.

FEUERSTEIN, J.: _____

FILED
IN CLERKS OFFICE
U.S. DISTRICT COURT N.Y.
★ SEP 13 2006 ★
P.M. _____
TIME A.M. _____

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OPINION & ORDER

03-cv-1260 (SJF)(CLP)

Defendants move for reconsideration of a July 12, 2006 Opinion and Order denying Plaintiff's motion for summary judgment and granting in part and denying in part Defendants' cross-motion for summary judgment. Defendants argue that because the facts contained in their Rule 56.1 statement in support of their motion are uncontested and therefore deemed admitted, summary judgment should have been granted on all counts. Defendants' motion relies upon Plaintiff's failure to submit a Rule 56.1 counter statement. The Second Circuit made clear in Holtz v. Rockefeller, 258 F.3d 62 (2d Cir. 2001), "allegations of uncontested fact cannot be deemed true simply by virtue of their assertion in a Local Rule 56.1 statement." Id. at 73. Since Plaintiff submitted evidence creating issues of fact on the claims that remain, Defendant's motion for reconsideration is denied.¹

IT IS SO ORDERED.

Sandra J. Feuerstein
United States District Judge

Dated: September 11, 2006
Brooklyn, New York

¹ Defendants also seek dismissal of Plaintiff's claims under New York state law. The July 12 Order denied Defendants' motion to dismiss the false arrest claim, and granted Defendants' motion to dismiss the malicious prosecution claim. (July 12 Order at 6, 8). These claims are subject to the same standards under § 1983 and New York state law, Weyant v. Okst., 101 F.3d 845, 852 (2d Cir. 1996), and were thus addressed in the July 12 Order. (See July 12 Order at 6, 8). Defendants have failed to offer any arguments meriting reconsideration, and their motion for reconsideration on these claims is denied. Plaintiff has failed to respond to Defendants' motion to dismiss the remaining state law claims for assault and battery, and intentional infliction of emotional distress, and they are therefore dismissed.

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